

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HOGAN & HARTSON LLP
555 Thirteenth Street, NW
Washington, DC 20004;

Plaintiff,

v.

DEPARTMENT OF DEFENSE
1000 Defense Pentagon
Washington, DC 20301-1000

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Hogan & Hartson LLP (“Hogan & Hartson”) brings this action against Defendant Department of Defense (“DoD”) for mandatory and injunctive relief from the DoD’s failure to comply with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. In support of this complaint against the Defendant, Hogan & Hartson states and alleges the following:

Parties

1. Plaintiff Hogan & Hartson is a limited-liability partnership law firm with offices located both domestically and internationally, and a principal office located in the District of Columbia at 555 13th St., NW.

2. Defendant DoD is a department within the Executive Branch of the United States Government, whose headquarters is located at 1000 Defense Pentagon, Washington, DC 20301. Defendant is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1).

Jurisdiction and Venue

3. The Court has subject matter jurisdiction over Defendant pursuant to 5 U.S.C. § 552(a)(4)(B).

4. Venue is properly laid in this Court under 5 U.S.C.

§ 552(a)(4)(B).

Factual Allegations

5. On or about September 19, 1991, the United States and Kuwait entered into an agreement entitled “Agreement Between the Government of the United States of America and the Government of the State of Kuwait Concerning Defense Cooperation, Use of Facilities, Logistical Support, Prepositioning of Defense Materials and the Status of the Forces of the United States of America in the State of Kuwait” (“Agreement”).

6. This Agreement was subsequently renewed in or about September 2001.

7. By electronic submission on May 31, 2006, Plaintiff Hogan & Hartson requested a copy of the Defense Cooperation Agreement, any and all amendments or addendums, and any similarly related document dated after 1991.

8. By postcard postmarked June 6, 2006, the DoD acknowledged receipt of the request and assigned Hogan & Hartson’s request the Case Number 06-F-1822.

9. By letter dated July 17, 2006, DoD denied Hogan & Hartson’s request on the grounds that the records, in their entirety, are exempt from disclosure under Exemption 1 of the FOIA, 5 U.S.C. § 552(b)(1).

10. By letter dated October 30, 2006, Hogan & Hartson appealed DoD’s denial of the FOIA request and specifically requested segregable portions of the Agreement. The FOIA appeal narrowed the request to any portion of the documents addressing one of eight (8) different categories of information, including:

- (1) any and all introductory paragraphs, which identify the signatory parties and/ or which describe their intentions for entering into the Agreement;
- (2) any and all provisions setting forth the laws applicable to the following classes of U.S. citizens in Kuwait: civilians supporting the U.S. military, subcontractors supporting the U.S. military, and U.S. military personnel;
- (3) any and all provisions setting forth understanding concerning assertion of legal jurisdiction over U.S. citizens and non-U.S. citizens, including but not

limited to jurisdiction over and the laws applicable to Kuwaiti business entities' (corporations, limited liability companies, etc.) interactions with the U.S. military in Kuwait or the surrounding region;

- (4) any and all provisions setting forth the jurisdiction over and laws applicable to the following classes of non-U.S. citizens in Kuwait: civilians supporting the U.S. military, subcontractors supporting the U.S. military and Kuwaiti military personnel supporting the U.S. military;
- (5) any and all provisions regarding the usage of facilities and areas;
- (6) any and all provisions defining the terms "support", "supply", and "logistics";
- (7) any and all provisions regarding contractual jurisdiction, and or U.S. military contracting with Kuwaiti companies or non-U.S. citizens; and
- (8) any and all provisions regarding import and export regulations and claims.

11. By letter dated January 11, 2007, James P. Hogan, Chief, FOIA Policy, Appeals and Litigation of the DoD Office of Freedom of Information, acknowledged receipt of the FOIA appeal with included reference number 06-F-1822(A).

12. By letter dated November 29, 2007, DoD rejected Hogan & Hartson's appeal, again stating that the entirety of the Agreement was exempt from disclosure under Exemption 1 of FOIA, 5 U.S.C. § 552(b)(1).

13. The existence of the Agreement itself is not classified, a former Secretary of Defense has publicly opined as to the purpose for the Agreement, and publicly available military publications have revealed certain portions of the Agreement. *See* AFRD-KU-Command Judge Advocate, Fact Sheet Contractor Personnel in Kuwait, 1 (2002) *available at*: <http://www.afsc.army.mil/gc/files/Fact.doc> ("Contractors are given no legal immunity under the Defense Cooperation Agreement. Thus, contractor employees are subject to all host nation criminal and civil laws."); William Cohen, U.S. Secretary of Defense, Report to the United States Congress, Report on Allied Contributions to the Common Defense, (1997) *available at*:

http://www.defenselink.mil/pubs/allied_contrib97/index.html#IIc, (“Under the agreement with Kuwait, that nation has agreed to offset U.S. prepositioning and exercise costs.”); Special Projects Office Fort Monmouth, NJ, OCONUS Consolidated Guidebook for Operation Iraqi Freedom (OIF) Areas of Responsibility, App. I, I-1 (2004) *available at*: <http://cryptome.sabotage.org/spo-oconus.doc> (“Any contractor entering Kuwait needed a passport and Kuwait Entry VISA. The Requirement is codified in the Defense Cooperation Agreement.”).

14. Similar agreements between the United States and other countries or organizations are published and publicly available. *See e.g.* Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792; Agreement Regarding the Status of United States Military Personnel and Civilian Employees of the Department of Defense Who May Be in Jordan Temporarily in Connection With Their Official Duties, U.S.-Jordan, Oct. 4, 1996, State Dept. No. 04-571; Defense: Privileges and Immunities, U.S.-Egypt, July 26, 1981, 33 U.S.T. 3353.

15. Defendant DoD has control and possession of the records sought.

16. Hogan & Hartson has exhausted its administrative remedies.

Injunctive Relief under FOIA

17. Plaintiff incorporates by reference paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. The DoD has failed to comply with the public disclosure requirements of 5 U.S.C. § 552(a)(3)(A).

19. The DoD has failed to comply with the segregability requirements of 5 U.S.C. § 552(b) which provides in relevant part: “any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.”

20. Therefore, in accordance with 5 U.S.C. § 552(a)(4)(B), Hogan & Hartson is entitled to a judgment enjoining the DoD from unlawfully failing to provide information

requested pursuant to FOIA, requiring the DoD to produce for copying and inspection those documents or segregable portions thereof requested in Hogan & Hartson's FOIA request, and requiring the DoD to provide a detailed index and description of withheld documents, and portions of documents, in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C.Cir.1973) (*i.e.* a *Vaughn* index) that it intends to withhold.

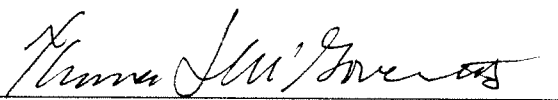
Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Enter a judgment declaring that the DoD has violated FOIA;
2. Enter a judgment enjoining the DoD from unlawfully failing to provide information requested pursuant to FOIA, requiring the DoD to produce for copying and inspection those documents, or any segregable portion thereof, requested in Plaintiff's FOIA request, and requiring the DoD to provide a detailed *Vaughn* index of any documents, or portions thereof, that it intends to withhold; and
3. Award attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) and grant such other and further relief as the Court may deem appropriate.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: 
Thomas L. McGovern III (D.C. Bar No. 415698)
Steven D. Williams (D.C. Bar No. 502303)
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Attorneys for Plaintiff Hogan & Hartson LLP

Dated: February 15, 2008